

**CHOCOLAY TOWNSHIP
ZONING BOARD OF APPEALS**

Thursday, March 17, 2016

7:00 PM

I. Meeting Called to Order

Chairperson Michelle Wietek-Stephens called the meeting to order at 7:03 PM.

II. Roll Call

Members Present: Chairperson – Michelle Wietek Stephens; Secretary - Kendell Milton; Board Member – Mark Maki; Member – Sandra Page; Alternate - Geno Angeli; Alternate – Paul Charboneau

Members Absent: Vice Chairperson – Karen Alholm (excused)

Staff Present: Dale Throenle, Planning Director/Zoning Administrator; Suzanne Sundell, Administrative Assistant

III. Approval of Agenda

Moved by Maki and seconded by Milton, to approve the agenda for March 17, 2016 as written.

Vote Ayes: 5 Nays: 0 Motion Carried

IV. Approval of August 27, 2015 Minutes

Moved by Maki, and seconded by Wietek Stephens, to approve the minutes for December 17, 2015 as corrected. *(Wietek Stephens indicated on Page 3, first paragraph reads "...Murray indicated that you can currently discharge firearms in the AF district, or anything **within** 500' from a residence. ..." **within** should be changed to **more than**, to read "...or anything **more than** 500' from a residence."*

Vote Ayes: 5 Nays: 0 Motion Carried

V. Public Comment

None

VI. Unfinished Business

None

VII. New Business

A. Variance Request ZB 16-01, 320 Shot Point Drive, Erin and Elizabeth Bassett

Planning Director Comments

Throenle indicated the home was built in 1960 and is a wood frame home which is currently 26' from the edge of the rock pile on their property. The Bassetts are looking to take part of that house and extend the height. During his research, Throenle found that in 2005 there had been a ZBA application to raise the roof two feet. The application was approved, but apparently the applicant never followed

through with this. The slope on the structure goes from the front of the building to the water side, so there is not much head clearance in the back. The property is such that they want to use the existing foundation, so this is not considered an addition, but an extension upward. In the minutes from 2005, there was an indication that the building may have moved off of the foundation. Throenle had taken pictures of the property, and did not see anything that would indicate this. Throenle also pointed out that the picture of the rocks coming up to the house were “iced” rocks and not the water level. Throenle indicated that there had been a few comments sent in, and these are included in the packet. Maki asked if Throenle had received any comments that were opposed. Throenle indicated he had not.

Applicant Comments

Erin Bassett indicated the application covered things. Wietek Stephens asked how long they had owned the property. Elizabeth Bassett indicated they had been there for 1 ½ years. They are planning on living there full time, starting May 1.

Wietek Stephens indicated it is not uncommon for people to buy waterfront property with a smaller older house on and tear it down and rebuild.

Elizabeth Bassett indicated this was probably true, but this property has an amazing view of the lake, and they have no interest in taking down the structure that is currently there, nor does she think the lot would support it, as there is quite a bit of swamp land.

Wietek Stephens asked Throenle how far the adjacent house is to the lake. Throenle indicated that they are all about the same – Elizabeth Bassett indicated she felt they were all about 100 feet back. Wietek Stephens asked if the lot was wide enough going back 100 feet to support the structure. Elizabeth Bassett indicated that the lot is 100’ at the lake and 28’ at the road, so it would be questionable, especially with the septic mound, which is 125’ from the lake.

Angeli asked if the house had ever been damaged by the lake – Elizabeth Bassett indicated they had heard stories, but as far as she knew, the only time would have been a broken window when the Edmund Fitzgerald went down. At that time, most of Shot Point would have been under water. Maki stated that it was his understanding that the waves have pounded on the windows in prior storms. Elizabeth Bassett indicated that there are storm shutters on the windows, and with the addition they are looking at mechanicals underneath to raise the windows up.

Maki asked if there had been any conversation regarding the flood plains and building codes. Throenle indicated that he had looked at the flood plain maps, and the Bassett’s are not in the flood plain. Maki asked if the property would have been in the flood plain on the old maps, and Throenle indicated they were not. Maki indicated he would have thought all of Shot Point would have been in a flood plain.

Maki asked if the second floor will work with the current structure. Erin Bassett indicated they would be hiring engineers to take a look. The contractor they have has indicated that the structure should support a second floor. Elizabeth Bassett indicated that she and Erin thought the best place to start was with the ZBA.

Wietek Stephens indicated that she liked the plans, and they are much more aesthetically pleasing than the current structure, and that the plans were modest. It has a great view, but when the water can hit the side of your house, it seems to be excessively close. Elizabeth Bassett stated it would take a major storm for that to happen. Wietek Stephens indicated that one of the reasons for requiring the waterfront setback is to keep water away from the structure, and part of the reason they had to come before the Zoning Board of Appeals for a variance is that the Zoning Ordinance is designed to discourage making places like this more habitable. The Zoning Ordinance seems to encourage that they take it down and rebuild within the setback. Elizabeth Bassett indicated that they are not interested in doing this, and they do not feel that there is anywhere else on the lot that is buildable. Wietek Stephens indicated that she would like to know if any other area on the lot was buildable. Throenle indicated that the drain field would need to be dug up and moved for this to happen, and then setbacks would need to be determined.

Maki indicated that when the lots were divided on Shot Point, it was not unusual for the lot to be 28' at the road and 100' at the waterfront. Maki feels that one of the draws would be how the structure is located. Maki indicated that even if the approval was given to build the second floor, it would not include tearing down and rebuilding the current structure within setbacks.

Milton indicated that he had been in the house before, and he found it interesting that the water was at window level.

Maki was impressed with the fact that the structure has been there for over fifty years, and although it would be nice to see it be rebuilt, it would be more costly than what the Bassett's are suggesting.

Wietek Stephens stated that there was some language about it not being consistent with the neighborhood, and it does seem to be inconsistent with the neighborhood. Elizabeth Bassett indicated there are some large houses on Shot Point, but theirs would be one of the smaller ones, even with the extension. Wietek Stephens pointed out that she would be more inclined to support this if she knew the exact dimensions were 100' back, because if the dimensions of the property 100' back were too narrow to support a house, it would be an argument for approving the variance.

Maki asked if they were being asked to approve a variance, or an expansion of a non-conforming structure. Wietek Stephens indicated that it requires a variance to build an extension to a non-conforming structure. Maki indicated that this would be a Class A expansion. He also indicated that in 2005 there were Class A and Class B designations, but now there is no distinction. The whole idea of having two types of

non-conforming was that in Class B you were not able to do certain things. Having a Class A designation essentially freed you from the regulation. The new language now just has non-conforming expansions. Wietek Stephens indicated that expanding a non-conforming structure is in opposition to the Zoning Ordinance.

Maki moved, Milton seconded to expand the structure to add a second floor because:

- 1. The building was built prior to there being any zoning ordinance requirements;*
- 2. They are not building any closer to the water than the current structure is;*
- 3. It is one of the only dwellings that's sitting within the 100' setback in that area;*
- 4. It does not appear to inhibit the adjoining properties to any degree, being not visible from them; and*
- 5. If the building does end up having to be torn down, they will need to come back to the ZBA. If the structure is added on to, then the variance is void.*

AYES: 4

NAYS: 1 (Wietek Stephens) MOTION CARRIED

Martha Jennings, 376 Shot Point, stated that she feels that the way the house sits right now is somewhat of a blighted property. She feels it is in the best interest of the neighborhood and the township. It will make the neighborhood nicer. She has had her property since 2006, and values have come down considerably.

B. Variance Request ZB 16-02, 120 Bayou, Ray Hirvonen

Planning Director Comments

Throenle indicated that this property, owned by Matt Hirvonen and Kathy Bull, is surrounded on three sides by water. The property owner would like to build a 28' x 40' garage. Regardless of where they would build the garage, they would not meet the setback requirements on all sides. The property owners have two proposed locations which are indicated on the map. The first location is the preferred location – the driveway that comes into the property goes to the home, and the garage would be located on the edge of the driveway. The second location is next to a drain field, and is also where the snow is pushed when plowed, which would mean there would be snow in front of the garage. The property owner's property extends across the bayou, but this piece is marshland and cannot be developed. In this area, other homeowners have garages, so this would not be the first one built. By building the garage, the homeowners would not impede the view of any of their neighbors. Throenle has looked at the flood plain maps, and this property is not in a flood plain. There is a sandbank along the water's edge that tends to move back and forth, so it would be a struggle to meet the setbacks at any given time.

Applicant Comments

Matt Hirvonen and Kathy Bull are the owners. Hirvonen indicated that the property has been in the family since 1962, and he has been looking forward to retiring there for quite a while. They are planning on living there for the rest of their independent living.

Wietek Stephens asked about the wood storage – Hirvonen indicated he is interested in woodworking and wood turning. He currently has a small sawmill at this location. The wood dries slowly, and needs somewhere to stack and store it. Wietek Stephens asked if this was a hobby or a business. Hirvonen stated that this was a hobby. Currently, about 1/3 of the garage is for storage.

Angeli questioned if there were any comments from the neighbors. Throenle indicated that he had not received anything – negative or positive. Maki indicated that the only ones it would impact are the neighbors right next to Hirvonen. Hirvonen indicated that he had spoken to everyone in the area and received no negative comments. Maki asked if there were any neighborhood covenants. Hirvonen indicated that they have a road association that meets twice a year, and he had brought this up at their last meeting.

Maki wondered if Hirvonen was planning on extending the driveway once this is built. Hirvonen indicated he would be. Maki questioned how far back the garage would be from the natural road surface. Hirvonen had not measured, so he was not sure. Maki indicated that he is supposed to be a minimum of 30 feet back from the road. Hirvonen indicated that it is a private road, and it ends at the highway – he owns the road from the railroad tracks back. Angeli asked if the setback applies to private roads – Maki indicated that it does.

Maki asked if anything would be done to the existing garage, such as converting to living area. Hirvonen indicated he was not planning on doing anything – he needs the additional storage.

Wietek Stephens felt that either location could be moved closer to the driveway or drain field, and get almost a full building width away from the water, reducing the non-conformities. There was a discussion of setbacks and determination of what is front and what is back. Maki indicated that there should be a setback of 30' from Bayou Road, but this is not an issue for Hirvonen as he is the last house on the road. Maki feels that the first location is the best spot, plus it gives an added buffer between Hirvonen and his neighbor. Hirvonen also indicated that if he needed to move the garage closer to the driveway, he may not have the turn radius to back his trailer into the garage.

Wietek Stephens pointed out the setback requirements for each property in the packet material. The first location would result in three new non-conformities, where the second location would result in one new non-conformity.

Wietek Stephens asked if the size of the garage is necessary. Hirvonen indicated that he was considering two structures at first, but then decided that the one that he is applying for is large enough. Bull indicated that one of the constraints of the house is there is no basement, which is where hobbyists would normally store their lumber, so they are making up for this with an additional garage.

Maki moved, Milton seconded to grant a variance with the 15’ setback and the 63’ setback as shown because:

- 1. Having water on three sides makes it practically difficult to meet the 100’ setback;*
- 2. The lot line that has been looked at as a front lot line, is more of a side lot line, which would normally only require a 10’ setback;*
- 3. With a condition that the land near the water not be changed from its natural conditions.*

AYES: 5 NAYS: 0 MOTION CARRIED

VIII. Public Comment

Matt Hirvonen offered his thanks for approving his request.

IX. Township Board Member/Planning Commission Member Comment

Page asked about the difference between a Class A and Class B designation. Maki indicated that the designation was dropped when the new Zoning Ordinance was adopted in 2008. Maki indicated that if you are Class B, there really is no protection. Class A would give the protection, because right now if you are non-conforming, and your property is destroyed, you can’t rebuild. Not having a Class A designation also makes it harder to get financing. Maki is planning on proposing the Township bring back the Class A and Class B. Charboneau asked how the different classes are determined. Maki indicated that a hearing is held, and a determination is made, similar to a variance. There are standards in the ordinance that would be addressed, and the ZBA would make the determination. Throenle asked if this also applies to non-conforming lots – Maki indicated that the classes only apply to structures – non-conforming lots are grandfathered in.

Wietek Stephens asked that Township Board Member Comments be added to IX. Commissioner’s Comments.

X. Informational

None

XI. Adjournment

Wietek-Stephens adjourned the meeting at 8:08 PM

Respectfully Submitted By:

Kendell Milton, Zoning Board of Appeals Secretary